No. 87-399

# In The Supreme Court
## Of The United States

October Term, 1987

Supreme Court of Virginia,

Appellant,

v.

Myrna E. Friedman,

Appellee.

**On Appeal from the United States Court Of Appeals for the Fourth Circuit**

## BRIEF OF THE STATES OF WYOMING, ILLINOIS, IOWA AND OHIO AS AMICI CURIAE IN SUPPORT OF APPELLANT

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## QUESTION PRESENTED

The question before the Court is whether the requirement of the Supreme Court of the Commonweath of Virginia that applicants requesting admission by reciprocity be residents of Virginia violates the Privileges and Immunities Clause of the United States Constitution, Article IV, §2, cl.1.

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## INTEREST OF AMICI CURIAE

The brief is filed on behalf of the States of Wyoming, Illinois, Iowa, and Ohio and is sponsored by the Attorney General of Wyoming as authorized by Supreme Court Rule 36.4. The Amici support the brief submitted by the Appellant and urge this Court to reverse the decision of the Fourth Circuit Court of Appeals.

Like Virginia, the Amici states require nonresidents wishing to practice law to pass a bar examination. An attorney who has practiced for at least five years in another jurisdiction may be admitted without examination if he becomes a bona fide resident of the state. Therefore, a decision by this Court that negates the residency requirement for admission without examination will significantly

affect the manner in which the Amici states admit attorneys to practice and the manner in which they supervise those attorneys.

The states of Illinois and Wyoming have a special interest in the outcome of this matter because federal courts have validated their residency requirements for admission without examination. See, *Sestric v. Clark*, 765 F.2d 655 (7th Cir. 1985), *cert. den.* 474 U.S. 1086 (1986), and *Sommermeyer v. Supreme Court of Wyoming, et al.*, 659 F. Supp. 207 (D. Wyo. 1987), *appeal docketed*, No. 87-1811 (10th Cir. June 2, 1987).

## SUMMARY OF ARGUMENT

A decision that reciprocity cannot be conditioned on bona fide residency will dilute the powers of the states to govern the practice of law within their borders. This Court should only strike down bar admission regulations which violate constitutional rights; because one does not have a fundamental right to avoid taking a bar examination, this Court should uphold Virginia's regulation. The rule has a rational relationship to a state's compelling interest to regulate the practice of law.

By permitting experienced attorneys to become admitted without examination, rather than requiring everyone to take a bar examination, Virginia facilitates interstate mobility of attorneys and contributes to the creation of a national economic union. A ruling which denies to states the privilege of allowing new residents to join the bar on motion could result in states abolishing reciprocity and conditioning admission on examination.



## ARGUMENT[1]

### I

### A DECISION THAT RULE 1A:1 OF THE VIRGINIA SUPREME COURT VIOLATES THE PRIVILEGES AND IMMUNITIES CLAUSE WILL UNNECESSARILY INTERFERE WITH ITS ABILITY TO REGULATE THE PRACTICE OF LAW.

This Court has long recognized that states possess sovereign powers to regulate the practice of law. "Since the founding of the Republic, the licensing and regulation of lawyers has been left exclusively to the state." *Leis v. Flynt*, 439 U.S. 438, 442 (1979). States have a compelling interest in establishing licensing standards for the practice of professions within their borders. *Goldfarb v. Virginia State Bar*, 421 U.S. 773, 792 (1975). States can require high standards of competency, including proficiency in the law and character. However, a state cannot impose admission standards which violate an applicant's constitutional rights, which have no rational relationship to the state's interests or which are arbitrary. *Schware v. Board of Bar Examiners*, 353 U.S. 232 (1957).

An application of the *Schware* test reveals that the Virginia residency requirement is within permissible bounds. First, the requirement does not violate the Privileges and Immunities Clause, Article IV, §2, cl. 1, U.S. Constitution. The facts of this case differ significantly from several recent U.S. Supreme Court cases which have found a constitutional infirmity in states' regulation of the activi-

[1]The Appellant has thoroughly and effectively presented the argument that the requirement of residency does not violate the Privileges and Immunities Clause of the United States Constitution. Consequently, to avoid repetition, the Amici will limit its discussion to the importance of the Rule in state regulation of bar activities and the effect of a ruling which vitiates the residency requirement.

ties of nonresidents. While this court is asked by Appellee to expand the holding of *Supreme Court of New Hampshire v. Piper*, 470 U.S. 274 (1985), there are significant differences which make the holding of *Piper* inapposite. There, the New Hampshire Supreme Court had promulgated a rule which denied nonresidents the opportunity to practice law within the state. In the instant case, any nonresident who passes the Virginia bar examination will be permitted to practice within the state. Nor does Virginia's rule smack of the discriminatory practices struck down in *Hicklin v. Orbeck*, 437 U.S. 518 (1978), and *United Building & Construction Trades Council v. Mayor & Council of City of Camden*, 465 U.S. 208 (1984), both of which involved efforts to foreclose economic competition of nonresidents. Finally, the regulation does not represent the kind of "arbitrary discrimination" found in *Frazier v. Heebe*, —— U.S. ——, 107 S. Ct. 2607, 96 LEd 2d 557 (1987), wherein an attorney who had passed the Louisiana bar exam was prohibited from practicing in a federal district court of the state because he did not have an office located in the district.

An application of the *Schware* test also reveals that Virginia's regulation has a rational relationship to the state's compelling interest to regulate the practice of law. The primary justifications for requiring residency reflect a sincere attempt to assure that attorneys are competent. One practicing in a state should be familiar with local rules of practice and the uniqueness of the admitting state's substantive law. Furthermore, such an approach prevents or discourages back door admissions; . . . one cannot circumvent high original admission standards of one state by taking a bar examination in another state whose standards for admission are not so exacting.

These reasons for requiring residency are valid ones, designed to further reasonable state expectations and are not feeble examples of rationalization to justify the residency requirement. If a nonresident attorney has not taken



the bar exam in the state in which he will be practicing, it is likely that he is not competent to practice in the state because he will not be familiar with the law of the state. However, if he moves into the state, it must be assumed that he intends to learn the laws of the state, because most of his clients will be citizens of that state and most of his cases will be focused on the law of the state. As was observed by Justice Rehnquist in his dissent in *Supreme Court of New Hampshire v. Piper*, 470 U.S. 274, 291 (1955), "law is one occupation that does not readily translate across state lines."

There are other obvious reasons a state has significant interests in encouraging attorneys to be residents. Some of these reasons are set out in Justice Rehnquist's dissent in *Piper*. They include the state's interest in enlarging the number of attorneys who some day could be involved in legislative activities; the state's interest in seeing that lawyers be knowledgable about local concerns which in turn can be translated into state policies; and the state's interest in seeing that attorneys become more actively involved in government, charitable and community affairs. These interests can only be fulfilled by resident attorneys. As Justice Rehnquist aptly stated:

> . . .the point is that New Hampshire is entitled to believe and hope that its lawyers will provide the various unique services mentioned above, just as it is entitled to believe that the residency requirement is the appropriate way to that end. *Id.* at 294.

There are other justifications for a residency requirement. A bar with a local membership creates the professional and social pressures necessary to maintain discipline. Further, local lawyers have a stake in the community. They thus have more of a "vested interest" to see that high professional standards are maintained. The community also

properly expects that lawyers know local customs and procedures.

Conditioning admission to the bar of Virginia without examination serves valid state interests which should be sustained. Residency requirements bear a rational relationship to all the permissible goals delineated in this argument.

## II

## A RULING ADVERSE TO THE COMMONWEALTH OF VIRGINIA COULD RESTRICT, RATHER THAN ENHANCE, THE INTERSTATE PRACTICE OF LAW.

The recognized purpose of the Privileges and Immunities Clause, Article IV, §2, cl. 1, U.S. Constitution, is to eliminate protectionist burdens imposed by states on nonresidents and to prevent the furtherance of parochial interests. However, a ruling that Virginia can no longer require residency as a condition precedent of admission could result in states abolishing their reciprocity provisions. If residency requirements for reciprocity are negated, states will have to decide whether to end the privilege of admitting lawyers on motion or stand willing to admit all lawyers in the country.

It is clear that states have the power to require that all attorneys pass a state's bar examination to practice in that state's courts. *Goldfarb v. Supreme Court of Virginia*, 766 F.2d 859, 863 (4th Cir. 1985), *cert. den.* 474 U.S. 1086 (1986). The end result of the abolition of Virginia's residency requirement for reciprocity may very well be a mandatory bar examination for all.

The policy of Virginia to admit nonresident attorneys on motion actually facilitates interstate mobility of attorneys. Ironically, it is this generous attempt to encourage the movement of attorneys which has exposed Virginia to



the charge of violating the Privileges and Immunities Clause.

## CONCLUSION

The Privileges and Immunities Clause of the United States Constitution is designed to create a national economic union. A state should not be permitted to discriminate against nonresidents for the benefit of its residents. However, the Virginia Rule does not violate the Appellee's constitutionally protected rights. Virginia has promoted legitimate state interests by ensuring the integrity and competency of persons who practice law within its boundaries through the promulgation of Virginia Supreme Court Rule 1A:1.

The judgment of the Court of Appeals for the Fourth Circuit should be reversed.

Respectfully submitted,

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